

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Cecile Gayzik, c/o Jamey Bidwell

Date application filed with the Town Clerk: August 3, 2007

Nature of request: A Special Permit to extend the non-conformity of the house into the setback by adding a two-story addition and a second floor deck, under Section 9.22 of the Zoning Bylaw

Address: 170 Pine Street (Map 5B, Parcel 48, R-N Zoning District)

Legal notice: Published on August 22 and 29, 2007 in the Daily Hampshire Gazette and sent to abutters on August 20, 2007

Board members: Barbara Ford, Russell Frank and Jane Ashby

Submissions: The petitioner submitted a packet with the application with the following:

- An aerial photo of the buildings and property, from the Town GIS system;
- A site diagram of the property and the existing house, deck, garage, driveway and shed;
- A site diagram of the proposed house with addition, new deck, driveway and garage (no change) and shed removed;
- First and second floor plans showing the addition to both floors, including dormers in the front of the house and the new second floor deck;
- Four exterior views of the proposed additions from all directions;
- Ten interior views of the proposed new bedrooms, recreation room and doors to the new deck;
- A Management Plan for the property.

For the September 18th continued hearing, the petitioner submitted another set of plans of the following:

- Parking for 8 cars, 6 parallel to the driveway and 2 in front of the garage;
- A site plan of the house with the proposed addition and the modified deck to stay within 7 feet of the property line;
- Other views of the modified deck;
- A larger set of plans that remove the proposed dormers and change the roofline for the existing western portion of the house;
- An addendum to the Management Plan, but unreadable.

Other submissions were:

- A memo from the Planning Department outlining the non-conforming nature of the property and other aspects of the proposal, dated August 30, 2007;
- Copies of previous permits ZBA FY2003-00037, a Special Permit for a supplemental apartment, and SPR 2005-00006, Site Plan Review for a non-profit workshop for children (Dancing Possum);
- Two letters from Anne Awad on behalf of her children who are abutters; the first letter dated 9/5/07

that opposed the proposed deck, and the second letter dated 9/6/07 that withdrew her objections;

- Two communications from Jason Skeels, Town Engineer. The first, an email dated September 13, 2007 stated that he was not comfortable with the addition because it would be so close to such a steep embankment along State Street and may compromise the trees and unstable slope. The second, a letter dated September 18, 2007 stated that he had met with the petitioner's designer and was more positive than earlier. Mr. Skeels made 6 recommendations to help preserve the Town trees and slope stability.

Site Visit: September 5, 2007

The Board visited the site without the petitioner and observed the following:

- A narrow triangular lot located at the corner of a busy east-west road (Pine Street) and a steeply descending road going in a north-easterly direction (State Street);
- A precipitous drop in elevation close to the back of the house onto State Street;
- The location of the existing deck that will be replaced by a two story addition to the house;
- The location of the proposed second story deck off the new addition;
- Several unregistered vehicles located on the easterly side of the garage;
- A driveway to the two-story garage where the Dancing Possum Workshop is located on the first floor and a supplemental apartment on the second floor;
- A parking area to the east of the driveway delineated by boulders.

Public Hearing: September 6, 2007

Jamey Bidwell, son of the applicant, spoke to the Special Permit application at the hearing. He began by going through the submitted packet of plans. He emphasized the following:

- The existing house and garage are located within the front 20' setback along State Street, thus making the building non-conforming;
- The house deck is now 7 feet away and the garage 8 feet from the property line;
- The shed which is located on the property line will be removed, reducing the non-conformity of the building on the easterly side of the property;
- The proposed construction consists of a two story addition to the back of the house and a new second story deck, built on poles;
- The existing deck will be removed;
- The setback for the house addition will be 7 feet from the property line, and the deck will be 4 feet from the property line;
- The addition will raise the roofline in the back to add three new bedrooms, for a total of five bedrooms plus study for the house;
- The addition also will include a large recreation area;
- The recreation area and one of the new bedrooms will have access to the new deck via sliding glass doors;
- The existing exterior chimney will become an internal chimney for the first floor dining area;
- The front of the house will stay the same, and the proposed addition will not be visible from the front or the easterly side of the house;
- It is very hard to see the house from State Street because of all the trees, so the addition will not be very visible from the north either; photos were submitted to illustrate the screening from State Street;
- The new second story deck will supported by 4 wooden poles and will abut the garage;
- There will be no lighting on the deck except for those required for the doorways.

Ms. Ford asked about the stability of the steep bank along State Street, since the proposed addition will be so

close to the property land and bank. Mr. Bidwell replied that the architect said that the proposed addition would not affect the bank. Mr. Frank said that he wanted verification from the Town Engineer as to the bank's stability.

Mr. Bidwell said that the house will be owner occupied. Currently the owner, his mother, lives in the supplemental apartment above the garage, but has trouble with steps and will move into the house. Mr. Bidwell's partner may move into the garage apartment; it will not be rented to anyone.

Ms. Ford asked about the number of bedrooms in the existing house. Mr. Bidwell responded that there are currently two bedrooms, plus an attic space occupied by his son which will be replaced by the proposed addition. If the Special Permit is approved, the house will have 5 bedrooms plus a study.

Ms. Ford expressed concern about the parking area and storage of excess vehicles and barrels. Mr. Bidwell said that he stores waste vegetable oil for his vehicles and for home heating. He also has three vehicles plus a camper that he keeps for sentimental reasons or for his son to work on that are not used or registered. Another vehicle is registered. The Board reminded Mr. Bidwell that trailer campers and open air storage of junk and/or inoperable vehicles are prohibited in all zoning districts (Section 3.02 of the Zoning Bylaw) and that he should remove the unregistered vehicles. Mr. Bidwell said that he would take care of it.

Mr. Bidwell said that there is room in the driveway for parking for the house (2 spaces), supplemental apartment (2 spaces) and the Dancing Possum (4 spaces).

Ms. Ford stated that if a Special Permit is given, there will be conditions concerning a parking plan and a plan for the extra unregistered vehicles.

Ms. Ashby said that she has a problem with the size of the deck. She felt that it should be cut back to be at least 7 feet from the property line and should not increase the nonconformity of the building. Mr. Frank suggested that the deck could be angled to keep it within 7 feet from the property line.

The Board agreed that the hearing should be continued so that the deck could be redesigned.

Ms. Ashby summarized what would be needed at the continued hearing:

1. A parking plan, with spaces delineated
2. Revised plan for the second story deck
3. Plan for removal/storage of the unregistered vehicles

Mr. Frank made a motion to continue the hearing to September 18, 2007 at 7:30 pm. in Town Hall.

Ms. Ashby seconded the motion, and the vote was unanimous to continue the hearing to September 18, 2007, 7:30 pm in Town Hall.

Continued Public Hearing September 18, 2007

At the continued public hearing, Mr. Bidwell said that he had new plans to address the three concerns expressed by the Board previously. He also said that he has worked closely with the Planning Department staff, the Town Clerk and the Building Commissioner in the past on this and other projects.

Mr. Bidwell gave a revised handout to the Board. The first page showed a parking plan, with 6 parallel parking places perpendicular to the east side of the driveway and two in front of the garage. The following comments were made:

- Ms. Ford said that there should be a berm, railroad ties or concrete, to delineate the parking spaces at

the eastern edge of the parking area. Mr. Bidwell responded that there are boulders there to delineate the parking area;

- Ms. Ashby expressed concern that the cars closest to the house would be trapped. The applicant responded that there never is a time when all 8 cars are on site. The pickup/drop-off times for the Dancing Possum are staggered and there are never more than 6 cars at a time;
- As for a turn around, the applicant said that the cars turn around on the grass;
- Mr. Bidwell directs traffic on and off the site between classes for the Dancing Possum;
- Mr. Frank noted that two parking places are too close to the garage and block the external stairway for the accessory apartment above the garage. The Zoning Bylaw (Section 7.101) requires that no parking place be located within eight (8) feet of a building wall;
- The Board concluded that there should be an orderly parking plan submitted for approval.

The second page of the applicant's new handout addressed the deck. The revised deck plan is shown as angled and 7 feet away from the property line along its entire length. The setback requirement along State Street is 20 feet. The revised deck no longer increases the non-conformity of the building into the setback. The two doors, one to the bedroom and one to the recreation room, will remain. The dimensions of the deck will be about 30 feet long by 8-10 feet deep. The pilings for the deck will be about three feet in from the edge of the deck, i.e., about 10 feet away from the property line. The Board appeared satisfied with the revised plans for the deck.

The third concern from the previous hearing was the number of unregistered vehicles on the property. Mr. Bidwell said that he will suspend his Dancing Possum classes for a period of time in order to put the vehicles inside the garage, repair and register them. A total of three cars will be put in the garage and two will be made operable again. The camper will remain outside on the property behind the garage. It currently is registered in the summer when the family uses it, and then taken off the road for the winter. When the repairs/registrations are finished, the Bidwells will have 3 registered automobiles and the camper on the property. The three cars will park in the parking area in front.

Ms. Ford asked about the size of the garage and the structure that is attached in the back. Mr. Bidwell said that he calls the structure a "lean to"; it is attached to the back of the garage, and can be accessed from inside the garage. It will remain on the property, while the detached shed on the property line will be removed. Ms. Ford noted that the garage dimensions are 23' x 26' on the plans, which is 598 square feet. Yet the plan gives the garage area as 877 square feet. This discrepancy should be corrected, the Board told the petitioner.

Ms. Ford noted that the plan to move the chimney inside the house will push out the foundation of the house by about three feet, increasing the non-conformity of the house. Currently most of the back of the house and garage are within the 20 foot setback from State Street.

Ms. Ford also noted that the addition of the house will increase the non-conformity of the house more than simply replacing the current deck with a bedroom.

Ms. Ford asked about the addition that will make the house two stories in the back and add dormers in the front of the house. Mr. Bidwell showed the Board a third set of plans that were different than the two sets already submitted. He said that the plan now is to raise the roofline over the entire bedroom section north to south, and not have a dormer. Ms. Ford noted that the addition will be visible from the front of the house now as well.

Mr. Frank stated that the Board has now seen three different sets of plans. Before the Board votes on the

proposal, there should be one set of plans that contains all the relevant information.

The Board then addressed the two communications from the Town Engineer, Jason Skeels. The first email was not positive in recommending the addition to the house. The second letter, written after meeting with the applicant's architect at the site, modified his initial reaction and made several recommendations to preserve the Town trees and maintain the stability of the slope along State Street.

Mr. Bidwell said that the addendum to the Management Plan that he just submitted covers two of the recommendations. He read the addendum to the Board: "The applicant should hire an arborist to minimize root damage and prune the tree (roots and branches) in accordance with the root damage and where the proposed addition will conflict with the lower branches. Also, shade tolerant ground cover should be incorporated into the plans to promote stabilization of the slope within the Town Right of Way." The Board noted that they could not read the addendum, and would need a better copy.

Ms. Ford noted that the Board could include Mr. Skeels comments as conditions if the Special Permit is approved.

Ms. Ashby said that she was not comforted by either letter from Mr. Skeels. She remained concerned that the State Street slope could be damaged, and that the Town would have to spend massive amounts of money to stabilize the slope and re-surface the road.

Ms. Ford said that there was no mention about the type of soils along the bank, which concerned her in terms of stability.

Mr. Bidwell made two points:

1. Based on both his architect's and the Town Engineer's analysis, he's confident that the loading of the proposed house will not impact the slope
2. The shed, 240 square feet, sits right on the edge of the bank. The roof dumps rain directly on to the embankment with no signs of erosion along that section of the bank.

Ms. Ashby said that she is concerned that damage done to the tree roots during construction may cause destabilization of the bank. Mr. Bidwell responded that, according to the Amherst Tree Warden Mark Snow, construction at the N-W corner of the house could compromise the roots by 20%, which will not damage the nearby trees. There are two trees 7 feet away from the current deck that are about 1 foot in diameter, he said.

Mr. Frank said that he has three issues:

1. He is not comforted by paragraphs #3 & #4 in the Town Engineer's second letter, which cautions that an addition so close to State Street may require a massive retaining wall for any future road work, since the slope already appears to be sloughing off into the roadway.
2. He is troubled by the parking, but with appropriate conditions and delineation of the spaces that will last, a satisfactory parking setup is possible. He stated that he cannot reach a decision without accurate plans, however.
3. The northwest corner of the proposed addition (bedroom #4) still bothers him. It has extended the nonconformity of the building too much into the setback.

Ms. Ashby agreed with the concerns about increasing the non-conformity of the building into the setback. She said that the root compaction and erosion during construction suggests a questionable situation, and it might be wise not to take the chance. Also, three sets of plans all different and an unreadable addendum to the Management Plan don't make her confident that the proposal will work.

Ms. Ford noted that if the contractor is not on top of digging the foundation, significant mistakes can happen in this case. If the building is not placed any further into the setback, it may be safer.

Ms. Ford asked if the petitioner has given any thought to designing the house in a different way, perhaps expanding the addition to the west instead of into the setback.

Mr. Bidwell said that he has no other alternatives than the way it is designed. He has spent several thousand dollars on the plans already. He is speechless he said, because neither the Board nor the Planning Department staff had given no indication earlier about any concerns. The Board responded that they had asked to hear from the Town Engineer at the first hearing before any further analysis of the proposal was made

Ms. Ashby added that the Engineer's letter was not a ringing endorsement. Citing Section 10.38 of the Zoning Bylaw, she said that it is not fair to the Town to make an immediate decision, given the substantial risk involved. She also wondered if there would be enough room to safely work on a foundation.

The Building Commissioner, Bonnie Weeks, stated that even with a small excavation, a small trench made with a "ditch witch" for example, there may not be enough room to work with only 8 feet to the beginning of the State Street bank.

Ms. Ford added that with the tree roots extending to the foundation, they will be impacted. Also, the back fill after pouring the foundation would be a problem.

There was a discussion of options for the applicant. The Board explained to Mr. Bidwell the three choices at this point: 1) The applicant could ask for a decision, and the Board would most likely deny the application in its current form; 2) The applicant could ask to withdraw without prejudice and re-submit plans at a later time; 3) The Board could continue the hearing, and the applicant would re-design the project. Ms. Ford said that the Board would be willing to continue the hearing for the applicant to re-design the plans so that the north-west corner of the addition could be pulled back to the current line.

Ms. Weeks said that the lot is non-conforming, as are the setbacks, so anything that is done to the house must come before the ZBA.

Mr. Bidwell wondered that if he re-designed the project, what would happen next. He said that his architect did a very thorough inspection of the site for over 4 hours, and he was confident that the project could be done safely.

Mr. Frank said that a two story addition is a major change, much different than the existing flat deck that has no foundation.

Ms. Ashby said that the entire proposed foundation wall is the problem in terms of destabilizing the bank. In her opinion, the first floor should remain as is, and not be extended. Ms. Ford suggested that perhaps the second floor could extend out over the first floor.

Mr. Frank said that he doesn't feel as strongly about impinging into the setback, although not to the extent that is now proposed.

Mr. Bidwell asked if the chimney could still be inside the house. Ms. Ashby responded that even that change pushes the foundation wall out 3 feet or so. Perhaps there could be another way to include the chimney without disturbing the foundation.

Mr. Bidwell said that perhaps the addition could be built on sona tubes, which are less invasive. A post hole digger could be used. However, the Board worried about how many sona tubes would be needed, and whether they would create the same vulnerability.

The Board concluded that if Mr. Bidwell wanted a risk-free approach, the design should stay back from the setback to the same levels that exist now. The consensus was that the footprint of the existing deck was not a suitable location for a foundation and two-story addition. The Board's concerns were with slope erosion, root damage, and that excavation would lead to major disturbance of the soil and embankment.

Ms. Ashby made a motion to continue the hearing to November 1, 2007, 7:30 PM. Mr. Frank seconded the motion, and the vote was unanimous to continue the hearing to November 1, 2007, 7:30 PM.

Continued Public Hearing November 1 and November 8, 2007

The hearing scheduled for November 1, 2007 had to be rescheduled to November 8, 2007 at the request of the petitioner.

At the November 8th hearing, Mr. Bidwell submitted a letter to the Board requesting that the Board vote to withdraw without prejudice the application for the house remodeling. Mr. Bidwell also asked the Board to waive the application fee for the next Special Permit application for work on his house.

Mr. Frank responded to the fee waiver request first. He said that the fee is needed for staff preparation of all applications to the ZBA, whether it's a new or second application. He may consider waiving the fee under special circumstances, such as for low income housing or a mistake by the Town. But there are no special circumstances in this case, and he does not support waiving the fee for the next Special Permit application by Mr. Bidwell.

Ms. Ashby agreed that there is no special circumstance and that the fee should not be waived.

Mr. Bidwell claimed that every submission he made was reviewed successfully by the Planning Department staff and the Town Clerk, so that he came to the ZBA hearings in good faith, thinking that he had done everything correctly, and expected to be able to move forward.

Ms. Ashby replied that issues emerged as the hearing progressed, such as the concerns of the Town Engineer and the proposed extension of the house foundation. She suggested, and the Board agreed, that given the extreme non-conformity of the land and location of the house, the petitioner should have more detailed architectural plans and review from the Town Engineer before starting a hearing with the Zoning Board.

Public Meeting – Zoning Board decision:

Mr. Frank made a motion to APPROVE Mr. Bidwell's request to withdraw the application without prejudice, but to DENY a recommendation to waive the fee for a future Special Permit application for changes to the house and/or property. Ms. Ashby seconded the motion.

For all the reasons stated above, the Board VOTED unanimously to APPROVE Mr. Bidwell's request to withdraw this Special Permit application without prejudice, but to DENY a recommendation to waive the fee for a future Special Permit application dealing with changes to the house and/or property.

BARBARA FORD

RUSSELL FRANK

JANE ASHBY

FILED THIS _____ day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2008.
NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2007,
in the Hampshire County Registry of Deeds.